

KATHRYN E. CAHOY (SBN 298777)
kcahoy@cov.com
MATTHEW E. DELGADO (SBN 306999)
mdelgado@cov.com
COVINGTON & BURLING LLP
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306-2112
Telephone: + 1 (650) 632-4735
Facsimile: + 1 (650) 632-4800

[Additional Parties and Counsel Listed on Signature Page]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SURGICAL INSTRUMENT SERVICE
COMPANY, INC.,

Plaintiff,

vs.

INTUITIVE SURGICAL, INC.,

Defendant.

Case No.: 3:21-cv-03496-VC

**JOINT STIPULATION AND
~~PROPOSED~~ ORDER TO MODIFY
CASE SCHEDULE**

Honorable Vince Chhabria

**JOINT STIPULATION AND ~~PROPOSED~~ ORDER
TO MODIFY CASE SCHEDULE**

WHEREAS, the Court entered a case schedule for the above-captioned action on August 23, 2021, which, among other deadlines, includes a date for completion of document production on April 29, 2022 and a further date for the completion of fact discovery on August 11, 2022. *See* ECF No. 53.

WHEREAS, at the Initial Case Management Conference, discovery was stayed pending resolution of Defendant Intuitive Surgical, Inc.’s (“Intuitive”) motion to dismiss Surgical Instrument Service Company, Inc.’s (“SIS”) Complaint. *See* ECF No. 42.

WHEREAS, the Court denied Intuitive’s motion to dismiss in part on November 23, 2021. *See* ECF No. 70.

WHEREAS, following the motion to dismiss decision SIS and Intuitive have engaged in efforts to negotiate the scope of document productions and produce documents ahead of the April 29, 2022 document production deadline.

WHEREAS, while those discussions have been productive, SIS and Intuitive have not yet resolved all outstanding issues related to custodians, search terms, and the documents and data to be queried and need additional time either to resolve outstanding issues without Court intervention or to bring any issues on which they reach impasse to the Court’s attention, and to serve any additional requests for production.

WHEREAS, SIS and Intuitive agree that an extension of approximately three months is in the best interest of judicial efficiency because, without the extension, SIS or Intuitive would have to bring issues to the Court that they anticipate being able to resolve with additional time.

WHEREAS, Intuitive and plaintiffs in the related consolidated cases captioned *In re: Da Vinci Surgical Robots Antitrust Litigation*, No. 3:21-CV-03825-VC, have also agreed to an extension of the case schedule in that matter of approximately three months, and it is in the best

interest of judicial efficiency to maintain these related cases on the same schedule to avoid duplicative discovery.

WHEREAS, SIS and Intuitive have not previously asked for an extension of the schedule and have requested the approximately three-month extension of dates that follow the production deadline with the intention that no further extensions will be necessary.

NOW THEREFORE, to ensure that all discovery and other pre-trial procedures can be completed efficiently and with minimal judicial resources, SIS and Intuitive propose extending the schedule by approximately three months, as indicated in Exhibit A hereto.

DATED: April 11, 2022

Respectfully Submitted,

ALLEN RUBY (SBN 47109)
allen@allenruby.com
ALLEN RUBY, ATTORNEY AT LAW
15559 Union Ave. #138
Los Gatos, CA 95032
Tel: (408) 477-9690

KAREN HOFFMAN LENT (*Pro Hac Vice*)
karen.lent@skadden.com
MICHAEL H. MENITOVE (*Pro Hac Vice*)
michael.menitove@skadden.com
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
One Manhattan West
New York, NY 10001
Tel: (212) 735-3000
Fax: (212) 735-2040

MICHAEL S. BAILEY (*Pro Hac Vice*)
michael.bailey@skadden.com
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
1440 New York Avenue, N.W.
Washington, DC 20005
Tel: (202) 371-7000
Fax: (202) 393-5760

By: /s/ Kathryn E. Cahoy
KATHRYN E. CAHOY (SBN 298777)
kcahoy@cov.com
MATTHEW E. DELGADO (SBN 306999)
mdelgado@cov.com
COVINGTON & BURLING LLP
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306-2112
Telephone: + 1 (650) 632-4735
Facsimile: + 1 (650) 632-4800

SONYA WINNER (SBN 200348)
swinner@cov.com
ISAAC D. CHAPUT (SBN 326923)
ichaput@cov.com
COVINGTON & BURLING LLP
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, California 94105-2533
Telephone: + 1 (415) 591-6000
Facsimile: + 1 (415) 591-6091

ANDREW LAZEROW (*Pro Hac Vice*)
alazerow@cov.com
ASHLEY E. BASS (*Pro Hac Vice*)
abass@cov.com

COVINGTON & BURLING LLP
One City Center 850 Tenth Street NW
Washington DC 20001-4956
Telephone: + 1 (202) 662-6000
Facsimile: + 1 (202) 662-6291

Attorneys for Defendant INTUITIVE SURGICAL, INC.

By: /s/ Richard T. McCaulley
JOSHUA V. VAN HOVEN
joshua.vanhoven@hglaw.com
GREGORY J. LUNDELL
greg.lundell@hglaw.com
111 N Market Street, Suite 900
San Jose, California 95113

RICHARD T. MCCAULLEY (*pro hac vice*)
richard.mccaulley@hglaw.com
116 W. Hubbard, Unit 20
Chicago, IL 60654

Attorneys for Plaintiff SURGICAL INSTRUMENT SERVICE COMPANY, INC.

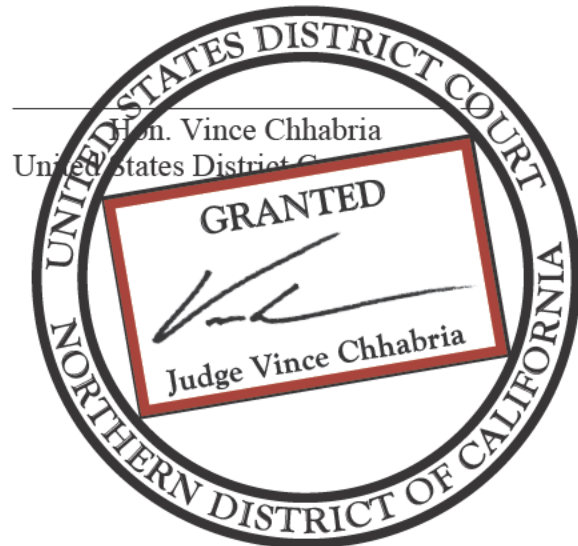
~~PROPOSED~~ ORDER

It is hereby ordered that the case schedule shall be amended as reflected in Exhibit A to the above stipulation.

The Court does not anticipate granting further extensions.

It is so ordered.

Dated: April 14, 2022



ATTESTATION

I, Kathryn E. Cahoy, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1(h), that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: April 11, 2022

/s/ Kathryn E. Cahoy
Kathryn E. Cahoy

EXHIBIT A
PROPOSED REVISED SCHEDULE

Event	Original Date	Proposed Date
Deadline to file motion to stay	August 13, 2021	N/A. Deadline passed.
Deadline to file opposition to motion to stay	August 27, 2021	N/A. Deadline passed.
Deadline for the parties to serve initial disclosures as required by Federal Rule of Civil Procedure 26(a)	August 25, 2021	N/A. Deadline passed.
Deadline to file reply to motion to stay	September 3, 2021	N/A. Deadline passed.
Hearing on motion to dismiss	September 30, 2021	N/A. Deadline passed.
Deadline to complete initial ADR	November 9, 2021	N/A. Deadline passed.
Deadline to complete substantial document production ¹	April 29, 2022	July 29, 2022
Joint CMC Statement due	July 6, 2022	September 21, 2022
Case Management Conference	July 13, 2022	(At the Court's convenience) (Estimated September 28, 2022)
Deadline to complete fact discovery	August 11, 2022	November 10, 2022
Deadline to serve expert reports on all issues on which a party has the burden of proof	August 26, 2022	December 1, 2022
Deadline to serve opposing expert reports	September 26, 2022	January 12, 2023
Deadline to serve rebuttal expert reports	October 26, 2022	February 23, 2023
Deadline to file motions for summary judgment and any <i>Daubert</i> motion(s)	November 21, 2022	March 23, 2023
Deadline to file opposition to motion for summary judgment and opposition to any <i>Daubert</i> motion(s)	December 19, 2022	April 20, 2023

¹ The parties agree that it is more efficient to require substantial rather than all document production by this deadline and have thus modified the language from the Court's original Order in this Proposed Revised Schedule.

Event	Original Date	Proposed Date
Deadline to file reply in support of motion for summary judgment and reply in support of any <i>Daubert</i> motion(s)	January 9, 2023	May 11, 2023
Hearing on motion(s) for summary judgment and any <i>Daubert</i> motion(s)	February 9, 2023	(At the Court's convenience) (Estimated June 8, 2023)
Joint CMC Statement due	March 1, 2023	June 28, 2023
Case Management Conference	March 8, 2023	(At the Court's convenience) (Estimated July 5, 2023)